

APPEAL NO. 021281
FILED JUNE 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 24, 2002. The hearing officer resolved the disputed issue by concluding that the appellant (claimant) is not entitled to first quarter supplemental income benefits (SIBs). The claimant appeals, challenging the hearing officer's determination that she is not entitled to first quarter SIBs. The respondent (carrier) responds, contending that there is sufficient evidence to support the determinations of the hearing officer.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant reached maximum medical improvement on March 3, 2001, with a 16% impairment rating; that the claimant has not commuted any impairment income benefits; and that the qualifying period for the first quarter was from October 22, 2001, through January 20, 2002. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case are both the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1) and the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). Rule 130.102(d) sets out the ways that an employee can demonstrate a good faith effort.

The claimant testified that she worked approximately twenty-nine hours per week for a two-week period out of the qualifying period and that she worked approximately twenty hours per week during the remaining portion of the qualifying period. Although the claimant introduced evidence from a referral doctor which stated the claimant "will remain on a non-work status," the evidence reflected that the claimant was working at that time. The carrier introduced evidence which reflected the claimant was not restricted to working less than eight hours a day. Whether the claimant has been unemployed or underemployed as a direct result of the impairment from the compensable injury is generally a fact issue for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 950819, decided July 6, 1995. Whether the claimant has made a good faith effort (pursuant to Rule 130.102(d)) to obtain employment is also a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The claimant complains that the hearing officer discussed the potential nature of her compensable injury and the fact that she did not attend a functional capacity evaluation (FCE). The hearing officer did not make any finding of fact or conclusion of law regarding the nature of her compensable injury and there was some evidence presented at the CCH that the claimant failed to attend an FCE. It was not inappropriate for the hearing officer to discuss these factual matters as well as others in his discussion of the evidence.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Philip F. O'Neill
Appeals Judge